

No. 9/5/84-6 Lab./7209.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and management of M/s Hyderabad Asbestos Cement Products Ltd., Ballabgarh.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 64/81

between

SHRI KRISHAN KUMAR BAJAJ, WORKMAN AND THE MANAGEMENT OF M/S HYDERABAD ASBESTOS CEMENT PRODUCTS LIMITED, BALLABGARH

Present.—Shri H.R. Dua for the workman.

Shri S.N. Bhandari, for the Management.

### AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, the Governor of Haryana referred the following dispute between Shri Krishan Kumar Bajaj workman and the Management of M/s Hyderabad Asbestos Cement Products Limited, Ballabgarh, to this Tribunal, for adjudication.

Whether the termination of service of Shri Krishan Kumar Bajaj was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In claim statement dated 30th April, 1981, it was alleged by the claimant that he was engaged as Fitter by the Respondent Management on 9th January, 1970. It was then alleged that the Respondent did not give facilities to its workmen due to which the workmen formed a Union. The claimant was elected as Office Secretary of the Union which was not relished by the Management and they were determined to sack the petitioner on one pretext or the other. It was then alleged that petitioner was served with a false and fabricated charge-sheet by an unauthorised person of the Company and that the service conditions of the claimant was governed by the Certified Standing Orders of the Company and further that the chargesheet by an unauthorised person was illegal, yet the claimant had submitted his explanation. It was then alleged that the Management did not accept his explanation and appointed the enquiry officer who did not offer any opportunity of defence to the claimant and that the said enquiry was vitiated by the principles of natural justice and was held at the back of the workman. It was, therefore, alleged that the Management terminated the services of the claimant on 8-9-1971 in an illegal manner and that the claimant be reinstated with full back wages.

3. The Management in their written statement dated 30th June, 1981, pleaded that the claimant had chartered a demand, dated 5th November, 1971 in which he claimed reinstatement, but, ultimately, the Government declined to make the reference, on 18th February, 1972. It was then pleaded that the present order of reference made by the Government was not legal and as such the reference was bad on that account because no opportunity was given to the Management by the Government to show cause why its earlier order dated 18th February, 1972 should be reviewed or revoked. It was further pleaded that the claimant was chargesheeted by the Management on 11th August, 1971 and was suspended on 12th August, 1971 and that his explanation, dated 17th August, 1971 was received and the company considered the same. The enquiry was held against him by Shri Ajay Kumar Seth an Advocate from Delhi who conducted the enquiry and submitted his report and held that the claimant was guilty of the charges contained in the chargesheet. It was also pleaded that after considering the report of the Enquiry Officer, the claimant was dismissed on 8th September, 1971. It was denied that the claimant was elected as Office Secretary of the Union or that the Management was determined to sack the claimant in an illegal manner. It was further pleaded that the action of the Management was in accordance with the Certified Standing Orders and that the impugned order of dismissal was legal.

4. The claimant in his rejoinder, dated 4th October 1981 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 5th October, 1981:—

- (1) Whether the reference is bad on account of reasons given in preliminary objections? OPM
- (2) Whether the domestic enquiry is fair and proper? OPM
- (3) Whether the termination of service of Shri Krishan Kumar was justified and in order? If not, to what relief is he entitled? OPM



6. It may be mentioned that the Management has examined four witnesses and the workman himself appeared in the witness box. The documentary evidence has been led by both the parties. After going the entire evidence and hearing both the sides, my findings on the above issues are as under:—

**Issue No. 1:**

7. It was argued on behalf of the Management that previously the State Government had declined to make the reference on 18th September, 1971 and that the order of the State Government, dated 24th February, 1981 making the present reference to the Industrial Tribunal without hearing the Management was illegal and that the reference was bad. MW-4 Shri O.P. Sethi, Personnel Officer of the Management stated that previously the Government had declined to make the reference. He further stated that later on conciliation proceedings took place in which the Management filed their comments and there after the present reference was made. It will thus be seen that before the present reference was made, the Management took part in the conciliation proceedings and their comments were taken into consideration. As such according to the testimony of Shri MW-4 Shri O. P. Sethi, the Management took part in the conciliation proceedings, when the case was re-considered. In the ruling reported as M/s Escorts Limited, Faridabad, Vs. Industrial Tribunal, Haryana, Faridabad, 1983 Lab. I.C. page 223, it is laid down that it is true that the earlier rejection does not give any vested right to the employer to have the issue finally closed and no considerations of res judicata can possibly arise in this situation but nevertheless in view of adverse consequences that may ensue by referring a dispute the employer would be entitled to be heard before it is reopened. Consequently, the present reference is not bad because the Management was consulted when the conciliation proceedings took place for the second time and they submitted their comments which were considered by the Government. The issue is decided accordingly against the Management.

**Issue No. 2**

8. The Management has examined MW-1 Shri P. K. Seth who stated that he was appointed as Enquiry Officer and that Ex. M-1 was the photostet copy of the proceedings held by him while Ex. M-2 was the copy of the report submitted by him. He also stated that Ex. M-3 was the copy of the letter by which he was appointed as Enquiry Officer MW-2 Shri G. R. Desai Company Secretary of the respondent, proved document Ex. MW-2/1 and MW-2/2. MW-3 Shri Amar Singh Yadav, Labour Officer-cum-Conciliation Officer, Sector 7, Ballabgarh, stated that in the first instance, the Government had declined to make the reference in the present case. He further stated that he submitted his report. He further stated that Ex. MW-3/1 was the copy of the letter by which the Government refused to make the reference in the first instance. MW-4, Shri O. P. Sethi, Personnel Officer of the Management stated that the notice of demand copy Ex. MW-4/1 was received from the claimant and that the Government had refused to make the reference but later on conciliation proceedings took place in which they submitted their comments and the present reference was made by the Government.

The claimant Shri Krishan Kumar has appeared as WW-1 and stated that he was employed in the respondent factory on 9th January, 1970. He further stated that a Union was formed by them and he was the Office Secretary of the said Union. He then stated that a complaint was filed by him against Sarvshri A. K. Gupta K., L. Walewala, Vice President of the Management, R. N. Jhalan, President of the Management and Shri C. L. A. and Security Officer, under sections 107 and 151 Cr. P. C. He also stated that he was charge sheeted by the Management and was involved in a criminal case under sections 325/506 of I. P. C. but he was acquitted in those proceedings,—vide copy of judgement Ex. W-1. He further stated that Shri A. K. Seth was appointed as Enquiry Officer and that the claimant had given in writing to the Management that the said Enquiry Officer was not acting in an impartial manner and he did not expect justice from the said Enquiry Officer. He then stated that Ex. W-2 was the representation made by him in that respect. He then stated that his representative Shri Ram Murti Sharma appeared before the Enquiry Officer and thereafter he became ill when he informed the Enquiry Officer and produced the letter in that respect but he was asked by Enquiry Officer to go away and was proceeded ex parte. He further stated that he applied for being supplied the copies of the proceedings on 16th September, 1971 which application was received by the time office clerk, copy of which was Ex. W-3 and that the documents were not supplied to him. He then stated that in the first instance the Government did not refer his dispute, when he filed the Civil Suit and was reinstated with full back wages by the Civil Court,—vide copy of the judgement Ex. W4 but in appeal the case was remanded on the point of jurisdiction. He further stated that Shri P. R. Somany was not competent to pass any order and that the standing orders applied to the company. He further stated that in the Civil Suit, the respondent did not file the copy of the resolution and that Shri P. R. Somany was not competent to pass the impugned order of dismissal. He also proved the copies of the letters, Ex. W-5 and W-6. He then stated that the real cause of terminating his services was the complaint filed by him under sections 107/151 Cr. P. C. He then stated that after the decision of the Civil Court he requested the Government to refer the dispute when the present reference was made and that the writ petition filed by the management was dismissed by the Hon'ble High Court.

10. Firstly Ex. M-1 is the photostet copy of the enquiry proceedings which has been proved by the Management from the Enquiry Officer. A perusal of the same would show that three witnesses namely, Shri A. K. Gupta, MW-1, Shri B. Bhambi and Shri Ram Murty were examined on 28th August, 1971. Thereafter, the case was adjourned to 30th August, 1971. On that date, a letter was received from the claimant to the effect that his representative could not attend the enquiry due to some urgent work when the enquiry was adjourned to 1st September, 1971. On that date a letter was received from the claimant that he was ill and could not attend the enquiry, when the case was adjourned to 2nd September, 1971, on 2nd September, 1971, the



claimant stated that the representative Shri Ram Murti Sharma was ill when the case was adjourned to 3rd September, 1971. On 3rd September, 1971, the claimant stated that his representative Shri Ram Murti Sharma was lying ill and prayed for adjournment but the Enquiry Officer declined to accede his request and proceeded with the enquiry and the claimant left the place. The Enquiry Officer recorded the statement of Shri Chuni Lal MW-4 when the management closed its evidence on that very date. The Enquiry Officer then submitted his report Ex. M-2 dated 6th September, 1971 holding that the charges against the claimant stood proved. Thereafter the impugned order of dismissal was passed by Shri P. R. Somany, Senior Executive Officer of the Company on 8th September, 1971. The enquiry proceedings were held on 30th August, 1971 in a normal manner but on 1st September, 1971, the claimant did not appear due to his illness while Shri Ram Murti, representative of the claimant became ill on 2nd September, 1971. On 3rd September, 1971 he was also ill. On that date the Enquiry Officer did not adjourn the enquiry and proceeded with the same due to which the claimant left the enquiry proceedings which were then held *ex parte* and completed on that very date. When the claimant had informed the Enquiry Officer that his representative Shri Ram Murti Sharma was ill, the Enquiry Officer should have adjourned the enquiry proceedings for a reasonable period. He adjourned these proceedings from 2nd September, 1971 to 3rd September, 1971 and then proceeded with the enquiry as mentioned above. Adjournment of the enquiry from day to day with effect from 2nd September, 1971 was not proper because no reasonable time was given to the claimant by the Enquiry Officer when the representative of the claimant was suddenly taken ill. The Enquiry Officer proceeded with the enquiry in a hasty manner due to which the claimant did not participate in those proceedings. On this ground alone the enquiry proceedings cannot be held to be proper.

11. Secondly the claimant complained to the Management that he did not expect justice from the Enquiry Officer. On 28th August, 1971 the Enquiry Officer examined Shri R. C. Chharya on behalf of the Management and stated that the Management had considered the letter of claimant and came to the conclusion that the charges levelled against the Enquiry Officer were baseless, and stated that the enquiry should proceed. The Enquiry Officer then proceeded with the Enquiry. It is thus apparent that the Management did not hear the complainant before rejecting his application. Whether the allegations made in the complaint were baseless or not is a different matter but the proper course for the management was to hear the claimant before deciding the application. Since it was not done, it cannot be held that the enquiry proceedings were held in a proper manner.

12. Thirdly, the Management has produced documents Ex. MW-2/1 and MW-2/2. Ex. MW-2/1 is the extract of the minutes passed at the Board meeting of the Company held on 17th May, 1971 by which Shri Kishori Lal Ghuwalewala was designated as Assistant Vice President and Manager of the Company factory at Ballabgarh and was authorised to appoint the employees and the officers in connection with the business of the Company. Ex. MW-2/2 is the copy of the office order dated 25th May, 1971 by which the Assistant Vice President appointed Shri P. R. Somany, Senior Executive Officer to take disciplinary action against the workman and to terminate their services or dismiss them. Ex. W.4 is the photo stet copy of the judgement dated 19th July, 1976 passed by Learned Sub-Judge first class Ballabgarh in which it was held that no resolution whatsoever of the company had been brought on the record to show that the company had authorised the Senior Executive Officer to proceed against the claimant and consequently Shri P. R. Somany, Senior Executive Officer was not competent to issue any chargesheet and to pass the order of termination dated 8th September, 1971 of the claimant. The case was remanded in appeal when the Trial Court decided on 4th November, 1977 vide copy of judgement Ex. MW-4/1 that the Civil Court has no jurisdiction to try the suit. Para No. 14 of this judgement shows that after remand the respondent company examined Shri G. K. Desai to prove the copy of the resolution passed by the Board meeting on 17th May, 1971 (Ex. MW-2/1). It is thus apparent that the copy of the resolution was not produced in Civil Court in the first instance upto 19th July, 1976 and was produced for the first time when the case was remanded. MW-2 Shri G. K. Desai stated in cross examination that the book containing this resolution started with effect from 17th May, 1971 and that pages 78 to 300 of the same were lying blank. It was argued on behalf of the workman that the resolution in question did not exist upto 19th July, 1976 and that this document was prepared by the Management later on and was produced for the first time in the year 1977, when the case was remanded. If the resolution in question actually existed on 17th May, 1971 and the office order Ex. MW-2/2 was also passed on 25th May, 1971, there was no difficulty to produce this document at the earliest possible opportunity especially when it was pleaded in the plea that Shri P. R. Somany Senior Executive Officer, was not competent to issue the chargesheet. In the ruling reported as *Hindustan Brown Boveri Ltd. and Their workmen and another*, 1968 1-LLJ page 571, it is laid down that in the absence of a delegation it is the company and not the Works Manager who can exercise the power of punishment under standing orders 23 and 27. There appears to be some force in the argument of the representative of the workman that the resolution in question was not in possession of the management upto 19th July, 1976. It thus cannot be held that Shri P. R. Somany, Senior Executive Officer was competent to issue the chargesheet and appoint the Enquiry Officer and dismiss the claimant on 8th September, 1971.

13. Fourthly it was argued on behalf of the workman that no show notice was sent to the claimant as to why the proposed punishment of dismissal be not awarded to him and as such the impugned order of dismissal was illegal. Reliance for the submission was placed on the ruling reported as *Somarajan and others and Management of A. R. C. Engg. Works Am battur and another*, 1981(2)LLJ page 25 in which it is laid down that where a rule provides for the second show cause to be issue to the delinquent employee, failure to issue to said show cause, vitiated the entire disciplinary proceedings and the order of dismissal cannot be sustained. Second ruling is *Management of Machine Tools and Ancillary Castings (P) Limited, and additional Labour Court and others*.



1981 (d) LLJ.408 in which it is laid down that the order of dismissal was invalid as no opportunity was given to the employees as contemplated in order 17(4) (c) of the Model Standing Orders. Since no such show cause notice was issued by the Management before passing the order of dismissal, the enquiry proceedings cannot be held to be fair and proper.

14. The representative of the Management placed reliance on the ruling reported as Messrs Bharat Iron Works and Bhagubhai Bhautbhai Patal and others, 1976 F. L. R. (32) page 72, in which it is laid down that when an application under Section 33 of the Industrial Disputes Act, 1947 whether for approval or for permission is made to the Tribunal it has initially a limited jurisdiction only to see whether the prima facie case is made out in respect of misconduct charged. This ruling does not help the management because certain inherent defects have been found in the enquiry which go to the root of the matter. The second ruling is Sukhi Ram Vs. State of Haryana Chandigarh, 1282 LIC 1982 in which it is laid down that a workman having remedies both under the Industrial Disputes Act as well as Civil Court, he is to choose one or the other. This ruling is distinguishable on facts because the Civil Court ultimately held that it had no jurisdiction to try the suit vide copy of the judgement Ex. MW-4/1. Consequently, the dispute could only be decided under the provisions of the Industrial Disputes Act, 1947. In view of the above discussion, it is held that the domestic enquiry was neither fair nor proper. The issue is decided accordingly against the Management.

### Issue No. 3 :

In view of the above discussion the impugned order of dismissal dated 8th September, 1971 cannot be upheld and as such the claimant is entitled to reinstatement but since the claimant spents sufficient time in the Civil Court where it was ultimately held that the Civil Court has no jurisdiction to try the suit, the ends of justice would be met if the claimant is awarded half back wages. The award is passed accordingly.

Dated 20th September, 1984.

R. N. BATRA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 995, dated 24th September, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

The 23rd November, 1984

No. 9/5/84-6Lab/8190.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Executive Engineer, Provincial Division, P.W.D. (B&R), Jind.

IN THE COURT OF SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,  
ROHTAK

Reference No. 52 of 1982

between

SHRI RAM KISHAN, WORKMAN AND THE MANAGEMENT  
OF EXECUTIVE ENGINEER, PROVINCIAL DIVISION, P.W.D. (B&R), JIND

Present :—

Shri Khushi Ram Bansal, A. R. for the workman.

Shri S. Kaushal, A.R. for the management.

### AWARD

1. An industrial dispute, reproduced below, having arisen between the workman Shri Ram Kishan and the management of Executive Engineer, Provincial Division, P.W.D. (B&R) Jind, the Governor of Haryana



in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the same, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/143/81/16022, dated 25th March, 1982 :—

Whether the termination of services of Shri Ram Kishan was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed as a Driver with the respondent w.e.f. 20th March, 1976 but his services were terminated w.e.f. 23rd February, 1981,—vide order dated 20th February, 1981. It is further alleged that he was ordered to be reinstated later on,—vide order dated 1st July, 1981 but again the said order of withdrawal of termination was cancelled on 18th August, 1981 and in the process the respondent did not comply with the provisions of section 25-F of the Industrial Disputes Act, 1947.

3. A detailed reply was filed by the respondent, in which, preliminary objections taken are that the respondent is not an "Industry" as defined in section 2(J) of the Industrial Disputes Act, 1947 and that the claim of the applicant is not maintainable under the Industrial Disputes Act, 1947 and further the applicant has no *locus standi* to file the same and that the reference is bad for non-joinder of necessary parties.

4. On merits, most of the allegations made in the Claim Statement have been admitted. It is alleged that there was no post of driver in Jind Division, Executive Engineer, Jind,—vide his order dated 18th August, 1981 cancelling the withdrawal of termination order of the applicant.

5. On the pleadings of the parties, the following issues were settled for decision on 17th September, 1982 :—

1. Whether the respondent is not an Industry as defined under the Industrial Disputes Act? OPM.
2. Whether the reference is bad for non-joinder or necessary party? OPM.
3. Whether the termination of service of Shri Ram Kishan was justified and in order? If not, to what relief is he entitled?

6. The management examined MW-1 Shri C. L. Mahajan, S.D.E. and the workman appeared as his own witness as WW-1.

7. The learned counsel for the parties agreed that since reference is being decided on law point, so, I need not decide all the issues framed in this reference while deciding issue No. 1 only.

Issue No. 1 :

8. The learned Government pleader contended that in *A.I.R. 1983 N.O.C. 94 State of Punjab vs. Kuldip and others*, it has been held that the respondent is not an "Industry" as defined in section 2(J) of the Industrial Disputes Act, 1947 and so this reference is bad in law. On the other hand the learned Authorised Representative for the workman relied upon *Bangalore Water Supply Board's case 1978 1 ab.L.C. 467 (S.C.)* The Supreme Court authority referred to above was also considered by their Lordships of the Hon'ble High Court of Punjab and Haryana, while handing out the authority under reference. Decision of the Hon'ble High Court of Punjab and Haryana is binding upon this Court and so the reasoning given in the said authority while arriving at the decision that the respondent is not an "Industry". So, I find that the respondent is not an "Industry" as defined in section 2(J) of the Industrial Disputes Act, 1947 and as such this issue is answered against the workman.

9. In the light of my findings on issue No. 1, this reference is bad in law. The same is answered and returned accordingly. There is no order as to cost.

Dated the 1st October, 1984.

B. P. JINDAL,

Presiding Officer,  
Labour Court Rohtak.

Endorsement No. 52/82/3482, dated the 8th November, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.